

AUG 09 2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	Examiner: Rachel L.Porter
Edward J. Petrus)	
Serial Number 09/444,660)	Group Art Unit: 2166
Filed: November 22, 1999)	
For: Dietary Supplement Selector and)	
Method)	

Director
U.S. Patent & Trademark Office
Office of Petitions – Mail Stop Petitions
Alexandria, VA 22313-1450

PETITION FOR RECALCULATION OF PATENT TERM ADJUSTMENT

This is a Petition to the Director of the U.S. Patent & Trademark Office under 35 U.S.C. 154(b)(3)(B)(i) for a determination of the period of any patent term adjustment. A Request for Recalculation of Patent term adjustment in view of Wyeth (Form 131) was filed on 6/21/2010 and dismissed on 7/21/2010. The Patentee was advised to file a reply to that decision within 30 days.

Chronology:

11/22/1999	Application filed
09/11/2002	Final rejection of application
04/04/2003	First Appeal filed
07/21/2004	First Appeal decision
08/11/2004	Response to First Appeal filed
02/08/2005	Response after final filed
03/22/2005	Second Appeal filed
06/26/2006	Decision of 2 nd Appeal reversing rejection by examiner
09/18/2006	Notice of Allowance
	Patent term extension under 35 U.S.C. 154(b) – 462 days

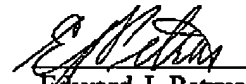
Remarks:

This Petition to the Director for Recalculation of Patent Term Adjustment Determination is based on two theories:

1. Under 35 U.S.C. 154(b)(1)(B) there is a Guarantee of no more than 3 year application pendency and (c) Guarantee or Adjustments for Delays due to Appeals. The date of issue is 11/14/2006 and filing date 11/22/1999 leaving a time of 7 years minus one week or 1453 days.
2. Under §1.703(e) Period of Adjustments of Patent term due to examination delay (FR vol.69 No.155 Aug 12, 1999, Rules & Regulation 50002) the period of adjustment is the sum of the number of days beginning on the date on which a notice of appeal to the Board of Patent Appeals was filed (4/4/2003) and ending on the date of a final decision (6/26/2006) in favor of the applicant by the Board of Patent Appeals. The time amounts to 3 years, 2 months and 22 days or 1177 days.

For the above stated reasons Patentee petitions the Director to adjust the term from 462 days to either 1177 or 1453 days.

Respectfully submitted,



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